

South Africa's Constitution is a roadmap for the future

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This year we are celebrating the twentieth anniversary of the South African constitution.

When it was adopted in 1996 our constitution boldly envisioned a democratic and open society, built on the **recognition of past injustices**.

Though we have worked hard towards **realising** this vision, **the long walk to freedom is not yet complete**.

If the next generation of South African leaders are to determine our future, they must first **understand the struggle of our past**.

Just as the struggle against apartheid defined my generation, the great challenge facing today's youth is inequality.

What can hasten the end of inequality is the collective will of young people. If you are aware of the rights enshrined in our constitution then **you will be empowered with the correct tools to eradicate inequality**.

South Africa's Constitution is recognised as the **world's most progressive Constitution**.

- It belongs to all South Africans.
- It is our nation's **most precious asset**.
- as South Africans we must **learn, understand and embrace our rights as enshrined in the Constitution**.
- **It is our roadmap to the future. A future of equality, mutual respect, dignity and humanity**. It is about building an equal society where the individual is respected. Our constitution was designed to protect a multicultural country like ours.

The Constitution pal History

The adoption of the Constitution in 1996 was **a major turning point in this country's history**. It has been called the "**birth certificate**" of a new South Africa - a country that is profoundly different to the one that existed before.

Of course, the Constitution did not arrive suddenly or magically: it is the product of protracted negotiations - and a long and troubled history before that. Many of the ideas it contains are the realisation of years of struggle.

Early Years:1900 to the 1980s

2000 years ago we had rule by Roman empire and later we had the Roman Dutch law that coined certain colonial precepts like : " Geen bloedige hand erf niks"-A bloody hand cannot inherit.

African precepts:"You cannot be a judge in your own cause"

The Common law and Customary law already developed

Concurring nations would want to entrench their power.

One group used the law to discriminate against each other.

In **1902 the Treaty of Vereeniging** - signed by Boer and British leaders - ends the Anglo-Boer War, which began in 1899.

The inauguration of the Union of South Africa took place on 31 May **1910**, and marks the disenfranchisement of black people.

Just under two years later, in **January 1912**, the African National Congress is formed.

1913 Land Act-dispossessed black peoples of their land.

In **1948 the National Party** wins the election (without gaining a majority of votes) and the policy of apartheid is officially born.

In the years to 1955 the ANC Youth League and the Congress Movement run a mass defiance campaign.

The day of 26 June 1955 is a crucial one in history: the Congress of the People meets in Kliptown, in Soweto, and adopts the Freedom Charter.

The late 1950s and 1960 are marked by anti-pass protests.

On 31 May 1961 South Africa is declared a republic. The Rivonia treason trial begins in 1964.

The Soweto uprising is set off on 16 June 1976 by pupils protesting against the imposition of Afrikaans as a medium of teaching.

In the 1980s, while mass eruptions continue in the streets, **two levels of negotiations begin**: Nelson Mandela initiates discussions with his jailers and the minister of justice, Kobie Coetzee; and in exile, Thabo Mbeki and his team begin talking to the government through intermediaries.

Apartheid unravels: 1989 to 1994 :

In the middle of 1989 Nelson Mandela, meets PW Botha, who is then the state president for to negotiate a settlement.

A month later the ANC gets the Organisation of African Unity and the United Nations to adopt the **Harare Declaration**, which sets out the basis for the transition to

democracy and demands that a representative and elected body draft South Africa's constitution.

In September 1989 FW de Klerk becomes State President and the Mass Democratic Movement (a latter-day incarnation of the UDF) organises a defiance campaign.

On 2 February 1990, De Klerk announces the unbanning of the ANC, and other liberation movements. Two weeks later, on **12 February, Nelson Mandela walks free**;

Beginning of Negotiations which led to the signing of the **Groote Schuur Minute**, sealing a commitment by the ANC and the NP to pursue peace and negotiations.

Another agreement follows on 12 February 1991: the DF Malan Accord extends the ANC's promise to lay down all arms.

20 organisations and parties formed the **Convention for a Democratic South Africa (Codesa)** - "sufficient consensus" be the decision-making mechanism.

Interim government have two stages:

the first **Transitional Executive Council (TEC)**;

the second would commence after the elections and consist of **the interim government and constituent assembly**.

The TEC would be multiparty in form and function alongside the existing parliament.

It was then decided that **27 April 1994 be the date for South Africa's first non-racial elections**.

A interim constitution that will lead to the drafting and adoption of a final, democratic constitution.

A government of national unity.

Constitutional democracy: 1994 undid the colonial laws:

South Africa's first non-racial election takes place on 27 April.

This election produces 400 leaders in the National Assembly and 90 in the Senate. In terms of Section 68(1) of the interim Constitution, a joint sitting of these bodies forms the Constitutional Assembly.

Nelson Mandela is inaugurated as democratic South Africa's first president on 10 May.

In September six theme committees are established to receive and collate the views of all parties on the substance of the Constitution.

In January 1995 a campaign to obtain public views on what should be in the Constitution.

In October 1996 the Constitution is adopted by the Constitutional Assembly and sent to the **Constitutional Court for certification**.

Nelson Mandela signs the Constitution into law in Sharpeville, in Vereeniging, on 10 December 1996, which is international Human Rights Day.

The Constitution, the highest law of the land came into effect on 4 February 1997. The week of 17 to 21 March is named national Constitution Week: more than seven million copies of the Constitution are distributed in all 11 languages.

1994 undid the colonial laws.

South Africa's Constitution is the result of remarkably detailed and **inclusive negotiations** that were carried out with an acute awareness of the injustices of the country's non-democratic past. It is the highest law of the land and no other law or government action can supersede it.

An interim constitution was first drafted as the country made its transition from apartheid to democracy. Then, in consultation with the public as well as elected public representatives a new constitution was written after April 1994 elections.

President Nelson Mandela signed the Constitution into law on 10 December 1996; it took effect on 4 February 1997. It is regarded as the most progressive constitution in the world, with a Bill of Rights second to none.

Human rights and freedoms

Human rights are given clear prominence in the Constitution. They feature in the Preamble with its stated intention of establishing "*a society based on democratic values, social justice and fundamental human rights*".

In the first chapter, human rights appear in the first of the Founding Provisions of the Republic of South Africa: "*Human dignity, the achievement of equality and the advancement of human rights and freedoms.*"

In other words human rights occupy 35 sections of Chapter 2.

Among the rights stipulated are those of equality, freedom of expression and association, political and property rights, housing, health care, education, access to information, and access to courts.

The unusually progressive rights that have come under particular spotlight, is the unqualified "Everyone has the right to life" and the inclusion of sexual orientation as one of the grounds upon which discrimination is forbidden.

Any limitation of rights must be "*reasonable and justifiable in an open and democratic society*" and must take several factors into consideration. Although Chapter 2 also acknowledges the possible need to derogate certain rights under states of

emergency, it lists a number of non-derogable rights.

The remaining three Founding Provisions of the Constitution reaffirm South Africa's determination to build on bedrock of equality, law and democracy. They are:

- Non-racialism and non-sexism.
- Supremacy of the Constitution and the rule of law.
- The provision that lays down South Africa's democratic philosophy by stipulating "universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness"

Languages

Language gains prominence in Section 6 of the Constitution, it states that everyone has the right to use the language and participate in the cultural life of his or her choice - though no one may do so in a manner inconsistent with any provision of the Bill of Rights.

The Constitution provides for 11 official languages: *Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sepedi, Sesotho, Setswana, siSwati, Tshivenda and Xitsonga*. It is important to note that specific attention is also paid to the Khoi, Nama and San languages and to sign language.

In addition, there is mention of "all languages commonly used by communities in South Africa" and those used for religious purposes.

The South African Constitution pays attention to detail which makes it unusually long; however the decision to write it in accessible language has resulted in a document that is easy to read.

Democratic government

Chapters 3 to 7 detail the country's democratic system of government, one characteristic of which is the stress on interaction between the national, provincial and local levels through the mechanism of **co-operative governance**.

Section 74 (2) states that Bills **amending the Constitution** require a two-thirds majority in the National Assembly as well as a supporting vote of six of the nine provinces represented in the National Council of Provinces - these being the two houses that comprise South Africa's Parliament.

Preceding that is the requirement that a Bill amending Section 1 of the Constitution, which sets out the state's founding values as described above, requires a 75% majority in the National Assembly and agreement from six of the nine provinces in the National Council of Provinces.

Serious violation of the Constitution is one of the grounds on which the President may be removed from office, also on a two-thirds majority.

Justice, security, international law

The Constitution goes on to deal with the courts and administration of justice, state institutions supporting constitutional democracy, public administration, security services (defence, police and intelligence), the role of traditional leaders, and finance. The final chapter covers general provisions, including international agreements and international law ("Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament"). The final chapter requires that all constitutional obligations "be performed diligently and without delay".

South Africa was able to draw on the collective wisdom from the democratic countries of the world in creating its Constitution guided by the FREEDOM CHARTER. Having come along a route of struggle and pain, the country took the process deeply to heart - and takes great pride in the result.

WHY LOVE OUR CONSTITUTION

1. It protects you. If it were not for the constitution, you could be arrested for almost anything. You might not realise it, but each and every day you are free in ways that were unimaginable 25 years ago.

2. Our children's rights are the best in the world. The section on children in our constitution has higher standards than the United Nations Convention on the Rights of the Child.

3. It's practical. Imagine if one group decided on which rights everyone else got to have? There's no other way to cope in a diverse society where everyone has a different idea about the way we should live.

4. Its fair. Everyone has the right to practice their own culture, religion and traditions as long as these don't violate the rights of others.

5. It's advanced. It includes rights that aren't mentioned in other constitutions, like children and the environment. Our constitution is studied around the world because it's considered so advanced.

6. It gives us freedom. We can tell jokes about anything we like – in many countries, you can be jailed for insulting the president or the king.

7. It's accessible. Nobody enjoys more rights just because they're rich and powerful. We're all equal before the law.

8. It carries legal weight. If you think your rights are being violated, you have several options listed here. That's the point of We The People: to educate you – because if you don't know what your rights are, you can't stand up for them.

9. Votes are more powerful than tanks. The army does not have the power to change the government because our constitution regards the votes of ordinary people as the most important deciding factor.

10. It represents the people of South Africa at our best. We all know we don't always achieve the standards spelled out in the constitution, but that doesn't mean we shouldn't try to reach them.

11. Our Constitution is unique because it includes what constitutional scholars call "positive rights". It requires the state to enact policies that minimise inequality. It frees South Africans from discrimination and redresses historical inequalities over personal choice, whether about who you love or reproductive rights.

12. It is the only constitution that includes third generation rights. These Human Rights go beyond the mere civil and social eg.

- Group and collective rights
- Right to self-determination
- Right to economic and social development
- Right to a healthy environment
- Right to communicate and communication rights
- Right to participation in cultural heritage